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No. 90-792

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LESLIE SALT CO. and CARGILL, INC.
Petitioners,

v.

UNITED STATES, *et al.*
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE AMERICAN FOREST COUNCIL, THE AMERICAN PAPER INSTITUTE, THE CHEMICAL MANUFACTURERS ASSOCIATION AND THE NATIONAL FOREST PRODUCTS ASSOCIATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTEREST OF THE *AMICI CURIAE*

Amicus curiae the American Paper Institute, Inc. is a non-profit trade association whose members include companies which account for approximately 90 percent of the domestic manufacture of pulp, paper, and paperboard. *Amici curiae* the American Forest Council and the National Forest Products Association

are non-profit organizations whose members include individual companies and other trade associations accounting for much of the timber managed and most of the timber harvested in this country, as well as most of the solid wood products manufactured. *Amicus curiae* the Chemical Manufacturers Association is a non-profit trade association whose members represent 90 percent of the productive capacity for basic industrial chemicals in this country. The *amici* therefore have a vital interest in the regulation of "waters of the United States," as applied to temporarily wet areas that may be present on land owned or used by such companies and as applied to surface impoundments used in manufacturing and forestry.

In reversing the district court, the Ninth Circuit held that the federal Clean Water Act authorizes the U.S. Army Corps of Engineers to regulate dredging and filling activities in "other waters," which are not connected in any way to or adjacent to traditional navigable or interstate waters, so long as their "use, degradation or destruction could affect interstate or foreign commerce." It did not matter if the "other waters" are man-made, nor even if they become wet only temporarily due to rainfall and are "in fact dry most of the year." The Ninth Circuit then found that the requisite connection to interstate commerce for these isolated "other waters" would be established if they "may provide habitat to migratory birds and endangered species."

The *amici* represent companies which own or lease extensive tracts of land used for large manufacturing facilities or for the production of timber, including approximately 71 million acres of forest land. In addition, these companies rely on timber from the over

250 million acres of private, nonindustrial forest land. These lands undoubtedly contain many isolated areas where topographical depressions occasionally collect rainfall runoff. The *amici* also represent companies which own and operate hundreds of man-made surface impoundments, used as water storage, treatment, or evaporation basins; cooling water or fire protection water ponds; log storage ponds; surface runoff sedimentation ponds; and the like.

If every such surface impoundment and every isolated, low-lying area were considered "waters of the United States" subject to regulation under the Clean Water Act merely because they have the potential to be used by migratory birds or endangered species, then these companies could find that their intended use of their lands and the continued operation of their man-made impoundments would be constrained by Corps of Engineers and U.S. Environmental Protection Agency permit requirements.[1]

Thus, the *amici* have a direct and immediate interest in the issues presented in this case, which concern fundamental aspects of how the activities of their member companies may be subject to federal regulation. Moreover, since the Ninth Circuit's definition of "waters of the United States" is so broad and so vague that it could apply to almost any property, almost any of the *amici*'s members (and countless other landowners) could be subjected to harsh civil or

[1] While this case concerns Corps of Engineers regulations under Section 404 of the Clean Water Act, 33 U.S.C. § 1344, the extent of "waters of the United States" also dictates U.S. Environmental Protection Agency jurisdiction to require permits for discharges to such waters under Clean Water Act Section 402, 33 U.S.C. § 1342.

criminal penalties if the government chooses to assert that the member's particular property and activity fall under Clean Water Act jurisdiction.

Amici therefore can help provide this Court with a much broader perspective on the pernicious effects which the Ninth Circuit's overextension of Clean Water Act jurisdiction could have on manufacturing and forestry activities throughout the United States.[2]

ARGUMENT

I. THIS COURT'S GUIDANCE IS NEEDED TO DELINEATE THE SCOPE OF CRITICAL AND FAR-REACHING FEDERAL WATER POLLUTION LEGISLATION

This case concerns the central issue in determining the applicability of virtually all of the regulatory controls imposed by the federal Clean Water Act ("CWA"), 33 U.S.C. § 1251 *et seq.* If an area is considered to be a "navigable water," defined to mean a "water of the United States" in CWA Section 502(7), 33 U.S.C. § 1362(7), then the U.S. Army Corps of Engineers (the "Corps") has authority to restrict or prohibit the discharge of dredged or fill materials into that area, under CWA Section 404, 33 U.S.C. § 1344. In a terse analysis of the Corps regulations defining "waters of the United States," the Ninth Circuit concluded that Petitioners' normally dry salt crystallizers and calcium chloride pits are "other waters" under the Corps regulations; that such isolated areas, which are neither adjacent to nor hydrologically connected with other surface waters, are

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[2] Pursuant to Rule 37 of the Rules this Court, the *amici* have obtained letters of consent to the filing of this brief from the parties and have filed those letters with the Clerk of the Court.

subject to Clean Water Act jurisdiction; and that mere use (or potential use) by migratory birds or endangered species is sufficient justification under the Commerce Clause to authorize such expansive federal jurisdiction. 896 F.2d at 360, Pet. App. at A-11 to A-12.

On the threshold question of whether wholly isolated "waters" fairly come within the meaning of "waters of the United States," the issue which this Court expressly reserved in *United States* v. *Riverside Bayview Homes, Inc.*, 474 U.S. at 131 n.8 (1985), the Ninth Circuit implicitly concluded that they do, without any reference to legislative history or to any judicial decision involving a wetland or "other water" with no connection to navigable-in-fact waters.[3] The Ninth Circuit then removed essentially any limitation

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[3] Congress intended to control not only discharges into traditional navigable waters, but also any other discharges into areas that might affect those waters (such as adjacent wetlands). *United States* v. *Riverside Bayview Homes, Inc.*, 474 U.S. at 132-33, 135-38. There is nothing in the objectives of CWA § 101(a), 33 U.S.C. § 1251(a), however, nor in the legislative history of the CWA, that suggests Congress intended to address areas which only occasionally collect water (or man-made excavations), if those areas have no potential impact upon traditional navigable waters or even on any other surface water body. Rather, the legislative history demonstrates that Congress was concerned about waters with some connection to and potential impact upon other surface waters. In discussing the geographic scope of the Clean Water Act, Congress spoke of a need to control the discharge of pollutants at its source because "water moves in hydrologic cycles," S. Rep. No. 92-414, p. 77 (1972), and because "[t]he once seemingly separable types of aquatic systems" are now known to be "interrelated and interdependent." 123 Cong. Rec. 26718 (August 4, 1977) (statement of Sen. Baker).

on the breadth of Corps permitting jurisdiction by concluding that any use (or apparently even potential for use) by migratory birds or endangered species is sufficient to bring an isolated "other water" within the reach of federal jurisdiction under the Commerce Clause.[4] The effect of these Ninth Circuit rulings is that Clean Water Act permitting requirements could be applied to vast additional areas of the country, and potentially regulated companies and individuals have only vague guidance as to whether they are subject to the Act.

A. Identification as a "Water of the United States" Triggers Extensive Permitting Requirements

Under CWA Section 404, 33 U.S.C. § 1344, a Corps permit is required in most instances prior to discharging dredged or fill materials into a "water of the United States." Under the Corps regulations, this means that a permit may be required for dredging of the area (unless it requires only *de minimis*, incidental soil movement), construction of roads, installation of intake or outfall pipes or buried utility

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[4] There is nothing in the record to suggest that any use of an area by migratory birds or endangered species, no matter how insignificant, has a substantial impact on interstate commerce. The mere potential for such use is even further removed. Nor is there any reason to believe that areas which only collect water after heavy rainfall, or artificial ponds that are used for industrial or commercial activity, would be expected to have a substantial effect on migratory birds or endangered species, in any event. As Chief Justice Rehnquist observed in a concurring opinion in *Hodel* v. *Virginia Surface Mining and Reclamation Ass'n*, 452 U.S. 264 (1981), "it has long been established that the commerce power does not reach activity which merely 'affects' interstate commerce. There must instead be a showing that regulated activity has a *substantial effect* on that commerce." *Id.* at 312 (emphasis in original).

lines, or even mechanically clearing the land. *See* 33 C.F.R. §§ 323.2-323.4 (1990) and, *e.g.*, *Avoyelles Sportsmen's League, Inc.* v. *Alexander*, 473 F. Supp. 525 (W.D. La. 1979). Various forestry or farming practices may involve activities which, if conducted on land considered to be "waters," would constitute the discharge of dredged or fill material, particularly during road construction, harvesting, and replanting.[5]

The effect of a broad definition of "waters of the United States" extends even further, however. Under CWA Sections 301 and 402, 33 U.S.C. §§ 1311 and 1342, a permit is required for any "discharge of a pollutant," which in turn is defined as "any addition of any pollutant to navigable waters from a point source." CWA § 502(12), 33 U.S.C. § 1362(12). As noted above, for purpose of the Act, CWA § 502(7) defines "navigable waters" to be "waters of the United States." The regulatory definition of "waters of the United States" promulgated by the U.S. Environmental Protection Agency ("EPA") is virtually identical to the Corps' definition of the same term which was applied by the Ninth Circuit in the case below. *Cf.* 40 C.F.R. § 122.2 (1990) *with* 33 C.F.R. § 328.3(a) (1990). Thus, an area determined to be a "water of the United States" is not only subject to Corps permitting requirements for any discharge of dredged or fill material but also is subject to EPA

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[5] Although CWA § 404(f)(1), 33 U.S.C. § 1344(f)(1), contains exemptions from Corps permitting requirements for certain forestry ("silviculture") or farming activities conducted in accordance with statutory criteria, those exemptions are limited by their terms and by CWA § 404(f)(2). The Corps has issued regulations (33 C.F.R. § 323.4 (1990)) and additional guidance describing when the exemptions will be available.

CWA Section 402 discharge permit requirements for any point source discharge of "pollutants" to the area.[6]

B. The Ninth Circuit's Interpretation of "Waters of the United States" Encompasses Vast Areas of Normally Dry Land

The definition of "waters of the United States" advanced by the Corps and accepted by the Ninth Circuit in the case below is so broad that it could be used to impose these Corps and EPA permitting requirements on the use of practically any land. The salt crystallizers at issue in the instant case were located in an area that had been pasture land in the past, 896 F.2d at 355, Pet. App. at A-2, and were "constructed on dry land." 700 F. Supp. at 480, Pet. App. at A-21. The district court made a factual finding that the property is not "inundated or saturated," and certainly not "at a frequency and duration" sufficient to support a prevalence of vegetation typically adapted for life in saturated soil conditions. *Id.* at 487, Pet. App. at A-35.

The district court clearly rejected the Corps' assertion that the former salt crystallizers constituted "other waters" or "wetlands" because of occasional "ponding of water on otherwise dry land." *Id.* at 485, Pet. App. at A-32. "After a rain that is heavy or long enough, any soil will become temporarily saturated. . . . [I]t is simply not enough that rain water collect on property for a few days for that property to become a water of the United States." *Id.* at 487,

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[6] "Pollutant" is defined very broadly in CWA § 502(6), 33 U.S.C. § 1362(6), encompassing a wide range of both process and non-process water discharges.

Pet. App. at A-35. Yet the Ninth Circuit concluded that the district court's findings were irrelevant for a determination of the Corps' jurisdiction over "waters of the United States." 896 F.2d at 360, Pet. App. at A-11.

Thus, under the Ninth Circuit's construction, mere ponding of rainfall on otherwise dry land *is* sufficient to transform that land to a "water" that may be subject to Corps jurisdiction under Clean Water Act jurisdiction.[7] By removing any requirement that a "water" be naturally occurring, be adjacent to or connected with a navigable-in-fact surface water, or even be wet for more than a short time, the Corps, now with the Ninth Circuit's blessing, has essentially removed any limitation that the term "water" places on Corps jurisdiction.

There is no reason to believe that Congress intended Clean Water Act jurisdiction to extend to the vast areas of the country where water may pond or soils may be saturated temporarily after rainfall or snowmelt on normally dry ground. Even if it did, however, the Constitution would still require some connection to interstate commerce to authorize such action by Congress. Apparently recognizing that some connection with interstate commerce was a necessity for its definition of "waters of the United States" to survive Constitutional scrutiny, the Corps included a requirement that an isolated "other water," to be

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[7] *See also Federal Manual for Identifying and Delineating Jurisdictional Wetlands*, January 1989, published by the Corps, EPA, the Fish and Wildlife Service, and the Soil Conservation Service, which suggests that an area where ponding or saturation occurs for as little as one week may be considered a "wetland." *Id.* at 6-7.

subject to Corps jurisdiction, must be such that its use, degradation, or destruction "could affect interstate or foreign commerce." 33 C.F.R. § 328.3(a)(3) (1990).

The Corps' interpretation at issue in this case, however, that an isolated "other water" has sufficient contacts with interstate commerce if it is "or would be" used as "habitat" by migratory birds or by an endangered species, 51 Fed. Reg. 41,206, 41,217 (1986), is so broad that in practice it represents no limitation at all on Corps jurisdiction, encompassing virtually all "waters" within the class of "waters of the United States" with sufficient ties to interstate commerce. The Corps' regulations do not even require that migratory *waterfowl*, or an endangered species with a *water-based* habitat, use the site; in fact, the Corps has asserted jurisdiction over property because of its use by woodpeckers and songbirds. *See Tabb Lakes, Ltd.* v. *United States*, 715 F. Supp. 726, 728 (E.D. Va. 1988), *aff'd*, 885 F.2d 866 (4th Cir. 1989) (Table), (reported at 20 Envtl. L. Rep. 20008). This Court can take judicial notice of the fact that birds such as woodpeckers and songbirds could make use of practically any undeveloped property, regardless of whether any significant ponding of water occurs there. Moreover, the Corps' interpretation and the Ninth Circuit's opinion do not even require that an area actually be used by migratory birds or endangered species, but only that an area "*may* provide habitat to migratory birds and endangered species." 896 F.2d at 360, Pet. App. at A-12 (emphasis added).[8] It is

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[8] In fact, the Corps has already asserted that their jurisdiction can be founded on such a speculative basis. *See, e.g., Leslie Salt*

difficult to imagine an area of land that could not be considered "waters of the United States" under this expansive definition.[9]

C. The Ninth Circuit's Interpretation of "Waters of the United States" Would Affect the Use of Private, Artificial Ponds and Impoundments

Since the Ninth Circuit would apply CWA permitting requirements to man-made waters created by excavating dry land, 896 F.2d at 359-60, Pet. App. at A-9 to A-11, its conclusion that use or potential use by migratory birds provides sufficient connection to interstate commerce affects the utilization of countless man-made surface impoundments. This expansive jurisdiction would include thousands of ponds and conveyances created for commercial or industrial

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Co. v. *United States*, 700 F. Supp. at 485, Pet. App. at A-31 ("The Corps' witnesses would extend that jurisdiction not only to *actual* use by migratory birds, but also to *potential* use."); *Tabb Lakes, Ltd.* v. *United States*, 715 F. Supp. at 728 (Corps directive that "all waterbodies which are *or reasonably could be* used by migratory birds are waters of the United States" (emphasis added)).

[9] It is unclear whether the Ninth Circuit really meant that an area which merely "may provide habitat" has a sufficient connection to interstate commerce, since the Ninth Circuit made a finding that migratory birds and one endangered species "may have used the property as habitat," yet nevertheless remanded to the district court "to determine if the property has the requisite connections to interstate commerce." 896 F.2d at 360, Pet. App. at A-12. Even if the Ninth Circuit meant to imply some requirement that the significance of use or potential use be demonstrated, that would present such an entirely vague and subjective criterion for application of Clean Water Act permit requirements as to be unconstitutionally vague. *See* pp. 14-16 *infra*.

purposes (*e.g.*, raw (intake) water settling and treatment ponds; process water evaporation ponds, similar to Petitioners' salt crystallizers; log storage ponds used in the manufacture of pulp, lumber, or solid wood products; ponds constructed for storage of fire protection water or process water; or settling ponds used to control rainwater runoff from mining, construction, commercial, and similar activities) and numerous other man-made bodies of water, with no connection to natural surface waters.

Since most such surface impoundments have at least the potential to be used in some way by migratory birds, Corps permit requirements would apply to dredging of such impoundments or construction within such impoundments, which activities are frequently necessary for their effective use. Moreover, EPA wastewater discharge permitting requirements under Clean Water Act Section 402, 33 U.S.C. § 1342, would presumably apply to any point source discharge of "pollutants" *into* such ponds.[10]

The Corps may argue that many of these types of artificial waters will not be affected, since the Corps has excluded certain "artificial lakes or ponds" under 33 C.F.R. § 323.3(b) (1990). This exemption is so

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[10] The administrative burden of having to obtain Corps or EPA permits for activities affecting the use of private, man-made surface impoundments which are neither tributary to nor adjacent to any other surface waters would be tremendous, but it would likely be overshadowed by the cost of complying with substantive requirements imposed in those permits (such as the "Best Available Technology" requirement for wastewater discharges under CWA Section 301(b)(2)(A), 33 U.S.C. § 1311(b)(2)(A)).

limited, however, that it is little comfort to a potentially regulated plant manager or landowner.[11]

First, the exemption is in practice quite narrow. The Corps and the Ninth Circuit have asserted that this exemption would only apply to artificially created waters "which are currently being used for commercial purposes." 896 F.2d at 360, Pet. App. at A-10. Second, the Corps asserts the right "on a case-by-case basis to determine that a particular water body within these categories" of artificially created waters *is* a "water of the United States." *Id.* at 359-60, Pet. App. at A-10.[12] Finally, since the exclusion only applies to "excavating and/or diking dry land" 33 C.F.R. § 323.3(b) (1990), and since virtually every area which collected rainwater even temporarily may be considered by the Corps to have been "a water of the United States" even prior to excavation or diking, in many cases the Corps could assert that an artificially created surface impoundment was not created on dry land but was created in a "water of the United States."[13]

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[11] Moreover, EPA regulations defining "waters of the United States" for CWA § 402 permitting purposes exclude only certain "waste treatment systems" which are "designed to meet the requirements of CWA"; they contain no exclusion for other types of ponds. *See* 40 C.F.R. § 122.2 (1990).

[12] Similarly, EPA has argued that its "treatment pond exception is simply notice to polluters that it will not generally regulate" discharges into waste treatment ponds, "not a promise that it never will." *Texas Municipal Power Agency* v. *EPA*, 836 F.2d 1482, 1488 (5th Cir. 1988).

[13] The Corps might also argue that the exclusion in 33 C.F.R. § 328.3(a) (1990) for "waste treatment systems,. . . designed to meet the requirements of CWA" could mitigate some of these

D. The Ninth Circuit Has Provided an Impermissibly Vague Standard for Assessing Harsh Civil and Criminal Penalties

While the cost and regulatory burden imposed by the Corps' and the Ninth Circuit's expansive definition of "waters of the United States" represents a tremendous potential impact on *amici* and other businesses, municipalities, and private citizens, the impact is greatly magnified by the harsh civil and criminal penalties available under the Clean Water Act. Section 309(d) of the CWA, 33 U.S.C. § 1319(d), provides for a civil penalty of up to $25,000 per day for a violation of the prohibition on unpermitted discharges, while CWA Section 309(c), 33 U.S.C. § 1319(c), could impose a criminal penalty of up to $25,000 per day of violation or imprisonment for not more than one year, or both, for even negligent violations.

The United States has been vigorously prosecuting companies and individuals for placing fill material in areas which the government considers wetlands or other "waters of the United States." In fact, this Court recently denied a petition for *certiorari* in a case where an individual was sentenced to three years

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concerns. That exemption was not an issue for Leslie Salt's salt crystallizers and calcium chloride pits, however, and it does not apply to thousands of man-made impoundments used for purposes other than "waste treatment." Moreover, that exemption, like that for "artificial lakes or ponds," may be severely limited by claims that the waste treatment system is located in an area that previously fell within the Corps' expansive definition of "waters of the United States." (EPA has recently argued that such a limitation is implied in its similar definition of "waters of United States" at 40 C.F.R. § 122.2 (1990). *See West Virginia Coal Ass'n* v. *Reilly*, 728 F. Supp. 1276, 1289-90 (S.D. W. Va. 1989) (appeal pending).)

imprisonment and fined $200,000 for filling a wetlands without a permit. *U.S.* v. *Pozsgai*, Cr. No. 88-00450-01, (E.D. Pa. July 13, 1989), *aff'd*, 897 F.2d 524 (3rd Cir. 1990) (Table), *cert. denied*, 111 S. Ct. 48 (1990).[14]

The companies and landowners faced with these severe potential penalties, however, have been provided few, if any, objective criteria by which to determine whether the use of their land requires a Corps or EPA permit. It does not matter that an area is only temporarily wet after periods of heavy rainfall, nor that an excavation is artificially created with no connection to other waters. It may be enough that the area merely has the *potential* to be used by migratory birds or endangered species, or there may be some undefined level of actual use required.[15] Such a nebulous and subjective standard for determining the applicability of stringent civil and criminal penalties must be unconstitutionally vague. *See, e.g., Connally* v. *General Const. Co.*, 269 U.S. 385, 391 (1926) (statute which "forbids . . . an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates

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[14] *See also, e.g., U.S.* v. *Marathon Development Corp.*, 867 F.2d 96 (1st Cir. 1989) (company fined $100,000 and its senior vice-president fined $10,000 and given a suspended six-month sentence with one year probation for filling in wetlands without a permit); Kamenar, *Environmental Protection or Enforcement Overkill?*, 7 Envtl. F. 29-31 (1990); *Trading Whiz Fined for Wetland Damage; $2 Million Md. Judgment May Be Record Against an Individual*, Washington Post, May 26, 1990, at A1.

[15] In fact, a dissenting opinion in the Fourth Circuit *Tabb Lakes* decision suggests that use by ducks and geese may be enough, but that use by robins and finches may not. 20 Envtl. L. Rep. 20008 at n.2 (4th Cir. 1989).

the first essential of due process law."); *Kolender* v. *Lawson*, 461 U.S. 352 (1983) (statute is unconstitutionally vague because it fails to describe with particularity what is required, encouraging arbitrary and discriminatory enforcement).

II. THE NINTH CIRCUIT'S DECISION CONFLICTS DIRECTLY WITH A DECISION OF THE FOURTH CIRCUIT

In *United States* v. *Riverside Bayview Homes, Inc.*, 474 U.S. 121 (1985), this Court described a two-part analysis to be used in determining whether the Corps may require a permit for placement of fill material on property. First, it must be determined whether the property falls within the applicable regulation; then, if it does, the court must assess whether the statute provides the Corps with authority to regulate discharges into such an area. *Id.* at 126, 129-30.

The district court in *Tabb Lakes* v. *United States*, 715 F. Supp. 726 (E.D. Va. 1988), as affirmed by the Fourth Circuit, 885 F.2d 886 (1989) (Table) (reported at 20 Envtl. L. Rep. 20008), looked to the Corps regulations defining "waters of the United States" and determined that those regulations do not include isolated waters which are or may be used by migratory birds or endangered species. The Corps would have to comply with informal rulemaking procedures under the Administrative Procedure Act, 5 U.S.C. § 553, if the Corps wished to attempt to expand its jurisdiction to cover such "waters."[16]

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[16] While not reaching the issue, the district court also expressed "grave doubts that a property now so used, or seen as an expectant habitat for some migratory birds, can be declared to be such a nexus to interstate commerce as to warrant Army Corps of Engineers jurisdiction . . . ." 715 F. Supp. at 729.

The Ninth Circuit, on the other hand, concluded that "[t]he Corps has adopted" actual or potential use by migratory birds and endangered species as a criterion for determining its jurisdiction over "other waters." 896 F.2d at 360, Pet. App. at A-11. Thus, under the two-part analysis laid out in *United States* v. *Riverside Bayview Homes*, the Ninth Circuit made the threshold determination that the Corps' regulations *do* include "other waters" whose only connection with interstate commerce is use or potential use by migratory birds and endangered species, while the Fourth Circuit reached exactly the opposite conclusion. The situation demonstrated by Appendix E to Petitioners' brief, where the Corps and EPA follow one definition of "waters of the United States" in the Fourth Circuit and a different definition in other circuits, must not be allowed to continue.

CONCLUSION

The Corps of Engineers' assertion that "waters of the United States" includes isolated lands which are subject to only occasional saturation or ponding, or artificial ponds created on normally dry land, solely because those areas are or could be used by migratory birds or endangered species, is so broad as to subject vast additional areas of this country to Corps (and EPA) permitting requirements. The Corps and the Ninth Circuit have adopted an impermissibly vague and subjective standard for the crucial determination of whether Clean Water Act restrictions apply. Moreover, that nebulous standard directly conflicts with a

decision of the Fourth Circuit. This Court's guidance is urgently needed to clarify the extent of federal jurisdiction under the Clean Water Act.

Respectfully submitted,

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